

**IN THE CIRCUIT COURT OF LAFAYETTE COUNTY, ARKANSAS  
CIVIL DIVISION**

FRIENDS OF LAKE ERLING ASSOCIATION

PLAINTIFF

v.

Case No. CV-2016-16-1

THE AGRED FOUNDATION d/b/a  
AMERICAN GAMEBIRD RESEARCH EDUCATION  
AND DEVELOPMENT FOUNDATION, INC.

DEFENDANT

**JUDGMENT**

Plaintiff appears by and through counsel, Samuel E. Ledbetter and Joseph Hamilton Kemp. Defendant appears by and through counsel, Michael Boyd, Stuart McMahan and Karen Talbot Gean. The Court, being well and sufficiently advised as to all matters of fact and law, does hereby grant the Plaintiff's Motion for Summary Judgment, denies the Defendant's Cross Motion for Summary Judgment and enters final judgment as follows:

1. This matter is before the Court on Remand from the Arkansas Court of Appeals. In its decision of October 4, 2017, the Court of Appeals dismissed AGRED's appeal stating, "We lack jurisdiction and dismiss because our record does not contain a final, appealable order or an appropriate Ark. R. Civ. P. 5(b) certification."

2. In its earlier Order, this Court did not address Plaintiff's argument that the Act of Exchange prohibits Defendant from charging the public for structures that extend onto Lake Erling nor did it issue its ruling on Defendant's Cross-motion for Summary Judgment.

3. In remanding this case, the Court of Appeals held "As a result, the court entered an order that granted summary judgment in favor of FOLEA and declared that, 'its members are entitled to unrestricted access to Lake Erling,' but failed to address all of FOLEA's claims for declaratory relief – specifically, whether AGRED's attempt to require adjacent landowners to

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obtain a permit and pay a fee to AGRED for structures on Lake Erling constituted a violation of the 'Act of Exchange.'" 2017 Ark. App. 510, 3-4.

4. This case calls upon the Court to interpret the Act of Exchange. Plaintiff prays for a Declaratory Judgment that the Act of Exchange prohibits AGRED from restricting the public's use of Lake Erling and that assessing a fee to access the Lake constitutes a restriction.

5. At a hearing on June 3, 2016, I stated:

"Merriam-Webster's dictionary defines a restriction as a limitation on the use or enjoyment of property or a facility. And limitation is defined as a limiting rule or circumstance. The assessment of a fee to use or gain access where none had been required heretofore to access a property or facility is certainly a circumstance which could limit a person's use or enjoyment of the property or facility, in this instance Lake Erling. Simply stated, you may wish to swim, fish, boat, or, on the lake, but you may not use a water craft with a motor unless you pay a fee and display a sticker denoting the payment of the fee is a restriction.

You may have a dock on the lake if you have paid an assessment or face removal of the structure is in this Court's opinion a restriction. It is clear from reviewing the Flood Control Act of 1944 and the Act of Exchange creating Lake Erling that a quid pro quo understanding was made between the United States and IP. IP was to have the use of a valuable public resource, the water from the reservoir for its industrial purposes, and in return was to maintain the resource for the use and benefit of the public with no restriction.

The proviso of no restriction is important to the meaning of the Act of Exchange as the public, the citizens of Lafayette County, the State of Arkansas, and the United States had given valuable consideration for the right to use Lake Erling. For IP or its successor in title to assess a fee for the use of the lake would in essence require the public to again pay consideration for use of the lake.

FOLEA asks this Court to find for it in this cause of action by declaring the Act of Exchange, in the Act of Exchange a right of unrestricted access to the Plaintiff and the public. The Court based upon the conclusions it has reached in addressing the issue of standing in this case agrees with the Plaintiff's analysis that the language of the Act of Exchange provides the right of unrestricted access to the FOLEA members as well as to the public at large.

The Plaintiff also prays that this court temporarily and permanently enjoin the Defendants from restricting the rights of plaintiffs, its members, or the general public from access to Lake Erling. The Court finds the prayer for a temporary injunction to be a moot issue as a hearing on the merits has been had on the

declaratory judgment issue and the Court's ruling herein obviates the necessity of the requested relief.

However, going forward this Court does find that the Defendants should be enjoined from taking actions restricting the rights of FOLEA, its members, and the public at large. The interpretation of the right of access afforded under the Act of Exchange to FOLEA, its members and the public are to be honored and exercised without restriction."

Hearing Transcript; June 3, 2016; 27:13 – 29:16.

6. Subsequent to this hearing, Plaintiff moved for Summary Judgment on all claims and Defendant filed its Cross-motion for Summary Judgment.

7. From my review of the pleadings and exhibits thereto, and based on argument of counsel, the Court finds that there is no genuine issue of material fact. Both Plaintiff and Defendant ask the Court to interpret the Act of Exchange and decide whether it allows AGRED to restrict public access to Lake Erling.

8. The issues are fully briefed and the Court, being well and sufficiently advised as to the matters contained in the pleadings and exhibits thereto, the undisputed facts, the law, and other matters, hereby enters a final judgment as follows:

**IT IS CONSIDERED, ORDERED, ADJUDGED AND DECREED** that, for the reasons stated in my ruling from the bench on June 3, 2016, and from the matters before the Court, Plaintiff's Motion for Summary Judgment filed June 8, 2016, is granted.

**IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED AND DECREED** that a Declaratory Judgment that (a) the Act of Exchange prohibits AGRED from restricting the public's use and enjoyment of Lake Erling is entered in favor of Plaintiff and that (b) assessing fees to access Lake Erling is a restriction on the public's use of Lake Erling.

**IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED AND DECREED** that Defendant AGRED is permanently enjoined from charging members of the public for access to

Lake Erling, including, without limitation, a fee for launching or operating a motorized boat on Lake Erling, requiring motorized boats on Lake Erling to display a boat decal, or requiring adjacent landowners to obtain a permit and pay a fee to AGREED for structures including docks, piers, and boathouses reasonably necessary for access to Lake Erling.

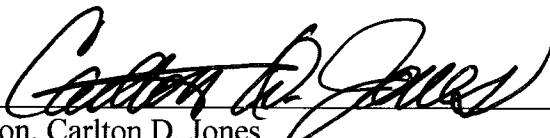
**IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED AND DECREED** that Defendant's Motion to Dismiss filed April 8, 2016, is denied.

**IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED AND DECREED** that Defendant's Cross-Motion for Summary Judgment filed July 22, 2016, is denied.

**IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED AND DECREED** that each party will bear its own costs and expenses.

**IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED AND DECREED** that any claims or requests for relief not specifically addressed herein are denied and dismissed with prejudice.

IT IS SO ORDERED this 28<sup>th</sup> day of April, 2019.

  
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Hon. Carlton D. Jones  
Circuit Judge

Prepared by:

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